

107TH CONGRESS
2D SESSION

H. R. 5394

To assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2002

Mr. WEINER (for himself, Mr. CONYERS, and Mrs. MALONEY of New York) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DNA Sexual Assault
5 Justice Act of 2002”.

6 **SEC. 2. ASSESSMENT OF BACKLOG IN DNA ANALYSIS OF**
7 **SAMPLES.**

8 (a) ASSESSMENT.—The Attorney General, acting
9 through the Director of the National Institute of Justice,

1 shall survey Federal, State, local, and tribal law enforce-
2 ment jurisdictions to assess the amount of DNA evidence
3 contained in rape kits and in other evidence from sexual
4 assault crimes that has not been subjected to testing and
5 analysis.

6 (b) REPORT.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, the Attorney Gen-
9 eral shall submit to Congress a report on the assess-
10 ment carried out under subsection (a).

11 (2) CONTENTS.—The report submitted under
12 paragraph (1) shall include—

13 (A) the results of the assessment carried
14 out under subsection (a);

15 (B) the number of rape kit samples and
16 other evidence from sexual assault crimes that
17 have not been subjected to DNA testing and
18 analysis; and

19 (C) a plan for carrying out additional as-
20 sessments and reports on the backlog in crime
21 scene DNA testing and analysis.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
23 authorized to be appropriated to the Department of Jus-
24 tice to carry out this section \$500,000 for fiscal year
25 2003.

1 **SEC. 3. THE DEBBIE SMITH DNA BACKLOG GRANT PRO-**
2 **GRAM.**

3 Section 2 of the DNA Analysis Backlog Elimination
4 Act of 2000 (42 U.S.C. 14135) is amended—

5 (1) by striking the heading and inserting “**AU-**
6 **THORIZATION OF DEBBIE SMITH DNA BACK-**
7 **LOG GRANTS.**”; and

8 (2) in subsection (a)—

9 (A) in paragraph (2), by inserting “includ-
10 ing samples from rape kits and samples from
11 other sexual assault evidence, including samples
12 taken in cases with no identified suspect” after
13 “crime scene”; and

14 (B) by adding at the end the following:

15 “(4) To ensure that DNA testing and analysis
16 of samples from rape kits and nonsuspect cases are
17 carried out in a timely manner.”.

18 **SEC. 4. INCREASED GRANTS FOR ANALYSIS OF DNA SAM-**
19 **PLES FROM CONVICTED OFFENDERS AND**
20 **CRIME SCENES.**

21 Section 2(j) of the DNA Analysis Backlog Elimini-
22 nation Act of 2000 (42 U.S.C. 14135(j)) is amended—

23 (1) in paragraph (1)—

24 (A) in subparagraph (B), by striking
25 “and” at the end; and

1 (B) by striking subparagraph (C) and in-
 2 serting the following:

3 “(C) \$15,000,000 for fiscal year 2003;

4 “(D) \$15,000,000 for fiscal year 2004;

5 “(E) \$15,000,000 for fiscal year 2005;

6 “(F) \$15,000,000 for fiscal year 2006; and

7 “(G) \$15,000,000 for fiscal year 2007.

8 Amounts made available to carry out the purposes
 9 specified in subsection (a)(1) shall remain available
 10 until expended.”; and

11 (2) in paragraph (2), by striking subparagraphs
 12 (C) and (D) and inserting the following:

13 “(C) \$75,000,000 for fiscal year 2003;

14 “(D) \$75,000,000 for fiscal year 2004;

15 “(E) \$75,000,000 for fiscal year 2005;

16 “(F) \$75,000,000 for fiscal year 2006; and

17 “(G) \$25,000,000 for fiscal year 2007.

18 Amounts made available to carry out the purposes
 19 specified in paragraphs (2) and (3) of subsection (a)
 20 shall remain available until expended.”.

21 **SEC. 5. AUTHORITY OF LOCAL GOVERNMENTS TO APPLY**
 22 **FOR AND RECEIVE DNA BACKLOG ELIMI-**
 23 **NATION GRANTS.**

24 Section 2 of the DNA Analysis Backlog Elimination
 25 Act of 2000 (42 U.S.C. 14135) is amended—

1 (1) in subsection (a)—

2 (A) in the matter preceeding paragraph
3 (1)—

4 (i) by inserting “, units of local gov-
5 ernment, or Indian tribes” after “eligible
6 States”; and

7 (ii) by inserting “, unit of local gov-
8 ernment, or Indian tribe” after “State”;
9 and

10 (B) in paragraph (3), by striking “or by
11 units of local government” and inserting “,
12 units of local government, or Indian tribes”;

13 (2) in subsection (b)—

14 (A) in the matter preceding paragraph (1),
15 by inserting “or unit of local government, or
16 the head of the Indian tribe” after “State”
17 each place that term appears;

18 (B) in paragraph (1), by inserting “, unit
19 of local government, or Indian tribe” after
20 “State”;

21 (C) in paragraph (3), by inserting “, unit
22 of local government, or Indian tribe” after
23 “State” the first time that term appears;

1 (D) in paragraph (4), by inserting “, unit
2 of local government, or Indian tribe” after
3 “State”; and

4 (E) in paragraph (5), by inserting “, unit
5 of local government, or Indian tribe” after
6 “State”;

7 (3) in subsection (c), by inserting “, unit of
8 local government, or Indian tribe” after “State”;

9 (4) in subsection (d)—

10 (A) in paragraph (1)—

11 (i) in subparagraph (A), by striking
12 “or a unit of local government” and insert-
13 ing “, a unit of local government, or an In-
14 dian tribe”; and

15 (ii) in subparagraph (B), by striking
16 “or a unit of local government” and insert-
17 ing “, a unit of local government, or an In-
18 dian tribe”; and

19 (B) in paragraph (2)(A), by inserting “,
20 units of local government, and Indian tribes,”
21 after “States”;

22 (5) in subsection (e)—

23 (A) in paragraph (1), by inserting “or local
24 government” after “State” each place that term
25 appears; and

1 (B) in paragraph (2), by inserting “, unit
2 of local government, or Indian tribe” after
3 “State”;

4 (6) in subsection (f), in the matter preceeding
5 paragraph (1), by inserting “, unit of local govern-
6 ment, or Indian tribe” after “State”;

7 (7) in subsection (g)—

8 (A) in paragraph (1), by inserting “, unit
9 of local government, or Indian tribe” after
10 “State”; and

11 (B) in paragraph (2), by inserting “, units
12 of local government, or Indian tribes” after
13 “States”; and

14 (8) in subsection (h), by inserting “, unit of
15 local government, or Indian tribe” after “State”
16 each place that term appears.

17 **SEC. 6. IMPROVING ELIGIBILITY CRITERIA FOR BACKLOG**
18 **GRANTS.**

19 Section 2 of the DNA Analysis Backlog Elimination
20 Act of 2000 (42 U.S.C. 14135) is amended—

21 (1) in subsection (b)—

22 (A) in paragraph (4), by striking “and”
23 after the semicolon;

24 (B) in paragraph (5), by striking the pe-
25 riod at the end and inserting a semicolon; and

1 (C) by adding at the end the following:

2 “(6) if the applicant is a unit of local govern-
3 ment, certify that the applicant participates in a
4 State laboratory system;

5 “(7) provide assurances that, not later than 3
6 years after the date on which the application is sub-
7 mitted, the State, unit of local government, or In-
8 dian tribe will implement a plan for forwarding, not
9 later than 180 days after a DNA evidence sample is
10 obtained, all samples collected in cases of sexual as-
11 sault to a laboratory that meets the quality assur-
12 ance standards for testing under subsection (d); and

13 “(8) upon issuance of the regulations specified
14 in section 10(d), certify that the State, unit of local
15 government, or Indian tribe is in compliance with
16 those regulations.”; and

17 (2) by adding at the end the following:

18 “(k) PRIORITY.—In awarding grants under this sec-
19 tion, the Attorney General shall give priority to a State
20 or unit of local government that has a significant rape kit
21 or nonsuspect case backlog per capita as compared with
22 other applicants.”.

23 **SEC. 7. QUALITY ASSURANCE STANDARDS FOR COLLEC-**
24 **TION AND HANDLING OF DNA EVIDENCE.**

25 (a) NATIONAL PROTOCOL.—

1 (1) IN GENERAL.—The Attorney General shall
2 review national, State, local, and tribal government
3 protocols, that exist on or before the date of enact-
4 ment of this Act, on the collection and processing of
5 DNA evidence at crime scenes.

6 (2) RECOMMENDED PROTOCOL.—Based upon
7 the review described in paragraph (1), the Attorney
8 General shall develop a recommended national pro-
9 tocol for the collection of DNA evidence at crime
10 scenes, including crimes of rape and other sexual as-
11 sault.

12 (b) STANDARDS, PRACTICE, AND TRAINING FOR SEX-
13 UAL ASSAULT FORENSIC EXAMINATIONS.—Section
14 1405(a) of the Victims of Trafficking and Violence Protec-
15 tion Act of 2000 (42 U.S.C. 3796gg note) is amended—

16 (1) in paragraph (2), by inserting “and emer-
17 gency response personnel” after “health care stu-
18 dents”; and

19 (2) in paragraph (3), by inserting “and DNA
20 evidence collection” after “sexual assault forensic ex-
21 aminations”.

22 **SEC. 8. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**
23 **GRANTS.**

24 (a) AUTHORIZATION OF GRANTS.—The Attorney
25 General shall make grants to eligible entities to—

1 (1) establish and maintain sexual assault exam-
2 iner programs;

3 (2) carry out sexual assault examiner training
4 and certification; and

5 (3) acquire or improve forensic equipment.

6 (b) ELIGIBLE ENTITY.—For purposes of this section,
7 the term “eligible entity” means—

8 (1) a State;

9 (2) a unit of local government;

10 (3) a college, university, or other institute of
11 higher learning;

12 (4) an Indian tribe;

13 (5) sexual assault examination programs, in-
14 cluding sexual assault nurse examiner (SANE) pro-
15 grams, sexual assault forensic examiner (SAFE)
16 programs, and sexual assault response team (SART)
17 programs; and

18 (6) a State sexual assault coalition.

19 (c) APPLICATION.—To receive a grant under this sec-
20 tion—

21 (1) an eligible entity shall submit to the Attor-
22 ney General an application in such form and con-
23 taining such information as the Attorney General
24 may require; and

1 (2) an existing or proposed sexual assault ex-
2 amination program shall also—

3 (A) certify that the program complies with
4 the standards and recommended protocol devel-
5 oped by the Attorney General pursuant to sec-
6 tion 1405 of the Victims of Trafficking and Vi-
7 olence Protection Act of 2000 (42 U.S.C.
8 3796gg note); and

9 (B) certify that the applicant is aware of,
10 and utilizing, uniform protocols and standards
11 issued by the Department of Justice on the col-
12 lection and processing of DNA evidence at
13 crime scenes.

14 (d) PRIORITY.—In awarding grants under this sec-
15 tion, the Attorney General shall give priority to proposed
16 or existing sexual assault examination programs that are
17 serving, or will serve, populations currently underserved
18 by existing sexual assault examination programs.

19 (e) RESTRICTIONS ON USE OF FUNDS.—

20 (1) SUPPLEMENTAL FUNDS.—Funds made
21 available under this section shall not be used to sup-
22 plant State funds, but shall be used to increase the
23 amount of funds that would, in the absence of Fed-
24 eral funds, be made available from State sources for
25 the purposes of this section.

1 (2) ADMINISTRATIVE COSTS.—An eligible entity
2 may not use more than 5 percent of the funds it re-
3 ceives under this section for administrative expenses.

4 (3) NONEXCLUSIVITY.—Nothing in this section
5 shall be construed to limit or restrict the ability of
6 proposed or existing sexual assault examination pro-
7 grams to apply for and obtain Federal funding from
8 any other agency or department or any other Fed-
9 eral grant program.

10 (f) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Department of
12 Justice, to remain available until expended, \$30,000,000
13 for each of fiscal years 2003 through 2007 to carry out
14 this section.

15 **SEC. 9. DNA EVIDENCE TRAINING GRANTS.**

16 (a) AUTHORIZATION OF GRANTS.—The Attorney
17 General shall make grants to eligible entities to—

18 (1) train law enforcement personnel and all
19 other first responders at crime scenes, including in-
20 vestigators, in the handling of sexual assault cases
21 and the collection and use of DNA samples for use
22 as forensic evidence;

23 (2) train State and local prosecutors on the use
24 of DNA samples for use as forensic evidence; and

1 (3) train law enforcement personnel to recog-
2 nize, detect, report, and respond to drug-facilitated
3 sexual assaults.

4 (b) ELIGIBLE ENTITY.—For purposes of this section,
5 the term “eligible entity” means—

6 (1) a State;

7 (2) a unit of local government;

8 (3) a college, university, or other institute of
9 higher learning; and

10 (4) an Indian tribe.

11 (c) APPLICATION.—To receive a grant under this sec-
12 tion, the chief executive officer of a State, unit of local
13 government, or university, or the head of a tribal govern-
14 ment that desires a grant under this section shall submit
15 to the Attorney General—

16 (1) an application in such form and containing
17 such information as the Attorney General may re-
18 quire;

19 (2) certification that the applicant is aware of,
20 and utilizing, uniform protocols and standards
21 issued by the Department of Justice on the collec-
22 tion and processing of DNA evidence at crime
23 scenes;

24 (3) certification that the applicant is aware of,
25 and utilizing, the national sexual assault forensic ex-

1 amination training protocols developed under section
2 1405(a) of the Victims of Trafficking and Violence
3 Protection Act of 2000 (42 U.S.C. 3796gg note);
4 and

5 (4) if the applicant is a unit of local govern-
6 ment, certification that the applicant participates in
7 a State laboratory system.

8 (d) RESTRICTIONS ON USE OF FUNDS.—

9 (1) SUPPLEMENTAL FUNDS.—Funds made
10 available under this section shall not be used to sup-
11 plant State funds, but shall be used to increase the
12 amount of funds that would, in the absence of Fed-
13 eral funds, be made available from State sources for
14 the purposes of this section.

15 (2) ADMINISTRATIVE COSTS.—An eligible entity
16 may not use more than 5 percent of the funds it re-
17 ceives under this section for administrative expenses.

18 (3) NONEXCLUSIVITY.—Nothing in this section
19 shall be construed to limit or restrict the ability of
20 an eligible entity to apply for and obtain Federal
21 funding from any other agency or department or any
22 other Federal grant program.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Department of

1 Justice \$10,000,000 for each of fiscal years 2003 through
2 2007 to carry out this section.

3 **SEC. 10. AUTHORIZING JOHN DOE DNA INDICTMENTS.**

4 (a) LIMITATIONS.—Section 3282 of title 18, United
5 States Code, is amended—

6 (1) by striking “Except” and inserting the fol-
7 lowing:

8 “(a) LIMITATION.—Except”; and

9 (2) by adding at the end the following:

10 “(b) DNA PROFILE INDICTMENT.—

11 “(1) IN GENERAL.—In any indictment found
12 for an offense under chapter 109A, if the identity of
13 the accused is unknown, it shall be sufficient to de-
14 scribe the accused as an individual whose name is
15 unknown, but who has a particular DNA profile.

16 “(2) EXCEPTION.—Any indictment described in
17 paragraph (1), which is found within 5 years after
18 the offense under chapter 109A shall have been com-
19 mitted, shall not be subject to—

20 “(A) the limitations period described in
21 subsection (a); and

22 “(B) the provisions of chapter 208 until
23 the individual is arrested or served with a sum-
24 mons in connection with the charges contained
25 in the indictment.

1 “(3) DEFINITION.—For purposes of this sub-
 2 section, the term ‘DNA profile’ means a set of DNA
 3 identification characteristics.”.

4 (b) RULES OF CRIMINAL PROCEDURE.—Rule 7 of
 5 the Federal Rules of Criminal Procedure is amended in
 6 subdivision (c)(1) by adding at the end the following: “For
 7 purposes of an indictment referred to in section 3282 of
 8 title 18, United States Code, if the identity of the defend-
 9 ant is unknown, it shall be sufficient to describe the de-
 10 fendant, in the indictment, as an individual whose name
 11 is unknown, but who has a particular DNA profile, as de-
 12 fined in that section 3282.”.

13 **SEC. 11. INCREASED GRANTS FOR COMBINED DNA INDEX**
 14 **(CODIS) SYSTEM.**

15 Section 210306 of the DNA Identification Act of
 16 1994 (42 U.S.C. 14134) is amended—

17 (1) by striking “There” and inserting the fol-
 18 lowing:

19 “(a) IN GENERAL.—There”; and

20 (2) by adding at the end the following:

21 “(b) INCREASED GRANTS FOR CODIS.—There is au-
 22 thorized to be appropriated to the Federal Bureau of In-
 23 vestigation to carry out upgrades to the Combined DNA
 24 Index System (CODIS) \$9,700,000 for fiscal year 2003.”.

1 **SEC. 12. INCREASED GRANTS FOR FEDERAL CONVICTED**
2 **OFFENDER PROGRAM (FCOP).**

3 Section 3 of the DNA Analysis Backlog Elimination
4 Act of 2000 (42 U.S.C. 14135a) is amended by adding
5 at the end the following:

6 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
7 is authorized to be appropriated to the Federal Bureau
8 of Investigation to carry out this section \$500,000 for fis-
9 cal year 2003.”.

10 **SEC. 13. PRIVACY REQUIREMENTS FOR HANDLING DNA**
11 **EVIDENCE AND DNA ANALYSES.**

12 (a) PRIVACY PROTECTION STANDARD.—Section
13 10(a) of the DNA Analysis Backlog Elimination Act of
14 2000 (42 U.S.C. 14135e(a)) is amended by inserting be-
15 fore the period at the end the following: “or in section
16 3282(b) of title 18, United States Code”.

17 (b) LIMITATION ON ACCESS TO DNA INFORMA-
18 TION.—Section 10 of the DNA Analysis Backlog Elimini-
19 nation Act of 2000 (42 U.S.C. 14135e) is amended by
20 adding at the end the following:

21 “(d) LIMITATION ON ACCESS TO DNA INFORMA-
22 TION.—

23 “(1) IN GENERAL.—The Attorney General shall
24 establish, by regulation, procedures to limit access
25 to, or use of, stored DNA samples or DNA analyses.

1 “(2) REGULATIONS.—The regulations estab-
2 lished under paragraph (1) shall establish conditions
3 for using DNA information to—

4 “(A) limit the use and dissemination of
5 such information, as provided under subpara-
6 graphs (A), (B), and (C) of section
7 210304(b)(3) of the Violent Crime Control and
8 Law Enforcement Act of 1994 (42 U.S.C.
9 14132(b)(3));

10 “(B) limit the redissemination of such in-
11 formation;

12 “(C) ensure the accuracy, security, and
13 confidentiality of such information;

14 “(D) protect any privacy rights of individ-
15 uals who are the subject of such information;
16 and

17 “(E) provide for the timely removal and
18 destruction of obsolete or inaccurate informa-
19 tion, or information required to be expunged.”.

20 (c) CRIMINAL PENALTY.—Section 10(c) of the DNA
21 Analysis Backlog Elimination Act of 2000 (42 U.S.C.
22 14135e) is amended—

23 (1) in paragraph (1), by striking “discloses a
24 sample or result” and inserting “discloses or uses a
25 DNA sample or DNA analysis”; and

- 1 (2) in paragraph (2), by inserting “per offense”
- 2 after “\$100,000”.

